

**INTERAGENCY AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF AGRICULTURE
AND
LEWIS COUNTY
AND ITS AGENT
LEWIS COUNTY NOXIOUS WEED CONTROL BOARD**

THIS AGREEMENT is made and entered into by and between the Washington State Department of Agriculture, hereinafter referred to as "WSDA," and Lewis County, hereinafter referred to as "Lewis County."

IT IS THE PURPOSE OF THIS AGREEMENT to provide Lewis County and its agent Lewis County Noxious Weed Control Board, funding for a project to control invasive knotweed species on the Chehalis River, Cowlitz River and associated tributaries within Lewis County.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

Lewis County through its agent Lewis County Noxious Weed Control Board shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" which is attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Regardless of the date of signature and subject to its other provisions, this Agreement shall begin on July 1, 2010, and end on June 30, 2011, unless terminated sooner or extended by WSDA as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed \$35,686.00. Only reasonable costs identified in Attachment "A", incurred directly related to the Lewis County Knotweed Control and Eradication Program, will be reimbursed to Lewis County under this Agreement.

Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree in writing to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Compensation for service(s) shall be as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

BILLING PROCEDURE

Lewis County shall submit properly completed invoices quarterly to the WSDA Agreement administrator. Reference WSDA Contract Number K477 on all invoices. Payment to Lewis County for approved and completed work will be made by warrant or account transfer by WSDA within 30 days of receipt of the properly completed invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier. In no case can this be more than 10 days past the end of the biennium.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. Documents must also support performance and costs of any nature expended in the performance of this Agreement. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents and other material relevant to this Agreement will be retained for six years after expiration of the Agreement and the Office of the State Auditor, federal auditors and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond, consistent with applicable laws. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data that originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by WSDA. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of the Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days of receipt of written notice. If the failure or violation is not corrected, this Agreement may be terminated immediately upon receipt of written notice of the aggrieved party to the other.

CONFLICT OF INTEREST

WSDA may, by written notice to Lewis County, terminate this Agreement if it is found after due notice and examination by the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, that there is a violation of the State Ethics Law, chapter 42.52 RCW; chapter 42.23 RCW; or any similar statute involving Lewis County in the procurement of or performance under this Agreement. Unless stated otherwise, the signatory of this Agreement is the Director's designee.

In the event this Agreement is terminated as provided above, WSDA shall be entitled to pursue the same remedies against Lewis County and its agent Lewis County Noxious Weed Control Board as it could pursue in the event of a breach of the Agreement by Lewis County or its agent Lewis County Noxious Weed Control Board. The rights and remedies of WSDA provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Director of the Department of Agriculture, and/or the designee authorized in writing to act on the Director's behalf, makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Agreement.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

LICENSING, BONDING, INDUSTRIAL INSURANCE AND OTHER INSURANCE COVERAGE

Lewis County and its agent Lewis County Noxious Weed Control Board shall ensure that all contractors hired to perform services under this Agreement shall comply with all applicable licensing and bonding requirements for the type of service to be performed, and with the provisions of Title 51, Industrial Insurance. Lewis County and its agent Lewis County Noxious Weed Control Board shall also ensure that all contractors provide proof of an adequate amount of commercial general liability insurance coverage for the activities to be performed under any subcontract.

GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County, Washington.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Plan of Work (Attachment A);
- c. Budget (Attachment B);
- d. Permission to Enter Private Land and Waiver of Liability (Attachment C); and

- e. Any other provisions of the Agreement, including material incorporated by reference.

ASSIGNMENT

Lewis County and its agent Lewis County Noxious Weed Control Board are responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement are carried forward to any subcontracts. In no event shall the existence of any subcontract operate to release or reduce the liability of Lewis County and its agent Lewis County Noxious Weed Control Board to WSDA for any breach in the performance of Lewis County and its agent Lewis County Noxious Weed Control Board's duties.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

CONTRACT MANAGEMENT

The Agreement administrator for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Agreement administrator for WSDA is:

Brad White, Pest Program Manager
Washington State Dept. of Agriculture
Plant Protection Division
PO Box 42560
Olympia, Washington 98504-2560
(360) 902-2071
bwhite@agr.wa.gov

The Agreement administrator for Lewis County is:

Bill Wamsley, Program Coordinator
Lewis County Noxious Weed Control Bd.
351 NW North Street
Chehalis, Washington 98532
(360) 740-1215
wamsleyb@wsu.edu

All communications between the parties relating to this Agreement and any billings and payments will be directed to those persons. Either party may change administrators by notifying the other in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement.

STATE OF WASHINGTON
DEPT. OF AGRICULTURE

LEWIS COUNTY

By: *Wayne C. Martin Looney*
Title: *Dist. Director*
Date: *8/26/10*

By: *[Signature]*
Title: *Chairman*
Date: *8-23-10*

By: *F. Lu Gose*
Title: *Member*
Date: *8-23-10*

By: *[Signature]*
Title: *Member*
Date: *8-23-10*

By: _____
Title: _____
Date: _____

ATTACHMENT A
Plan of Work
Lewis County
and its agent Lewis County Noxious Weed Control Board
Project for Knotweed Control
July 1, 2010 to June 30, 2011

County Knotweed Control Criteria:

Lewis County through its agent, Lewis County Noxious Weed Control Board, will conduct control work on the knotweed infestations of the Chehalis River, Cowlitz River, Cispus River, Lake Scanewa, Riffe Lake, Mayfield Lake and associated tributaries. Treatments will utilize funding allotted by the state legislature for control of knotweed species during the 2011 state fiscal year. Control efforts will be focused on treating all infestations from the headwaters of the river system in a downstream direction, progressing so that the possibility of re-infestation of treated areas is minimized. Control shall include field survey directly associated with areas to be treated.

Minimum work specifications: two or more workers will be hired or contracted to treat knotweed infestations known or discovered in the project area. Lewis County knotweed control employees will use an integrated weed management approach, in conjunction with the best integrated management practices known for knotweeds. All control methods will be employed consistent with the laws, rules and regulations of Washington State and Lewis County, the *Noxious Emergent Plant Management Environmental Impact Statement* (EIS) first published in November 1993, and all subsequent amendments to the EIS.

Lewis County must enter into a contract with WSDA under which Lewis County acts as a limited agent to carry out noxious and quarantine weed control for WSDA under the "Aquatic Noxious Weed Control National Pollutant Discharge Elimination System Waste Discharge General Permit" (NPDES permit) prior to the performance of any activity pursuant to this Agreement that discharges herbicides directly into streams or rivers, or indirectly into streams, rivers, estuaries, wetlands, along lake shorelines, or in other wet areas. Herbicide treatments may only occur at times allowed under provisions of the NPDES permit and must comply with conditions specified in such permit.

The crew will work closely with the county noxious weed coordinator and the WSDA knotweed control coordinator, and be active in the field from July 1, 2010 to June 30, 2011, as allowed by the variable growth season of the invasive knotweed species. Work will only take place on property that the crew has obtained prior written permission, utilizing the permission form provided by WSDA (Attachment C) or any applicable permission form previously approved by WSDA, for entry from the landowner or tenant. The county will also provide access to these properties for the WSDA knotweed control coordinator. Changes made to any permission form must be approved by WSDA prior to the performance of any work on that property undertaken under terms of this Agreement.

Work Crew and Work Hours:

The knotweed control crew will work or be under contract for the county noxious weed control board during the specified period, dedicating their time to controlling knotweed in the project area.

The control crew will have one crew leader who will be responsible for coordinating the crew's work, and who will maintain ongoing contact with the county noxious weed coordinator and the WSDA knotweed control coordinator. The crew leader will work in the field at all times with the crew, unless maintenance or other needs require the crew leader to leave the crew unattended.

Equipment:

The knotweed control crew will use all available tools for control, including manual control and herbicide applications, to control knotweed infestations in Lewis County. The control crew may use equipment provided by other agencies, provided the county noxious weed coordinator and the WSDA knotweed control coordinator agree to the usage of the equipment and materials.

Program Needs Provided by WSDA:

WSDA may furnish the county work crews with herbicide, public information fliers, public notification signs, and other equipment as deemed necessary by the WSDA knotweed control coordinator. All unexpended items remain the property of WSDA.

Expenditures:

The funds provided for the county knotweed control crew will primarily go towards wages and benefits for two or more crewmembers, contracted services, travel expenses for the crewmembers, equipment and supply purchases, and repair and maintenance. All supplies will be used in Washington State and under the supervision of county personnel. Reimbursable supplies covered under this Agreement include: backpack sprayers, machetes, herbicide storage containers, injection tools, safety equipment, raingear, and boots. An inventory list will be furnished to WSDA upon request. Reimbursable expenses include: vehicle maintenance, cell phone usage, and postage. Lewis County is authorized to purchase a public outreach advertisement in the local newspaper. All other expenditures for public outreach or education activities must be authorized in advance in writing by WSDA. Items such as maps, computer programs, models, or other costs not specified in this document will not be reimbursed unless the expenditure is specifically authorized in advance in writing by WSDA.

Coordination:

The Lewis County Knotweed Control Program will be coordinated with state, local and private control efforts.

Deliverables:

The county noxious weed coordinator will submit a written report to the WSDA Agreement administrator, documenting the work conducted on the sections of Chehalis River, Cowlitz River, Cispus River, Lake Scanewa, Riffe Lake, Mayfield Lake and associated tributaries in Lewis County, as follows: A season ending report is due by December 3, 2010, which will include the following for each site: date(s) of control activities, the type of control conducted, difficulties encountered, preliminary results of the control effort, and photo documentation of selected sites, including before and after treatment photos. The county noxious weed coordinator will supply WSDA with all geographic information system data that is generated as a result of this Agreement. Final payment under this Agreement will not be made until the season ending report is accepted by WSDA.

These deliverables are separate from and in addition to any reporting requirements associated with limited agent status under WSDA's Aquatic Noxious Weed Control NPDES General Permit coverage.

ATTACHMENT B
Budget
Lewis County
and its agent Lewis County Noxious Weed Control Board
Project for Knotweed Control
July 1, 2010 to June 30, 2011

Total payment to Lewis County and its agent Lewis County Noxious Weed Control Board will not exceed \$35,686.00 in fiscal year 2011 (i.e., July 1, 2010 through June 30, 2011).

1. Personnel	\$29,016
2. Travel	4,900
3. Indirect expenses	870
4. Supplies	400
5. Other	400
6. Equipment	100

TOTAL:\$35,686

Reimbursement for travel expenditures shall not exceed allowable costs as set forth in Washington State travel regulations, contained in the Office of Financial Management State Administrative and Accounting Manual, Chapter 10, Section 90.

ATTACHMENT C
Permission to Enter Private Land and Waiver of Liability
Lewis County
and its agent Lewis County Noxious Weed Control Board
Project for Knotweed Control
July 1, 2010 to June 30, 2011

PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY

THIS AGREEMENT INCLUDES PERMISSION TO ENTER PRIVATE PROPERTY AND A
WAIVER OF CERTAIN CLAIMS OF LIABILITY. READ CAREFULLY BEFORE SIGNING.

This Permission to Enter Private Land and Waiver of Liability is made between the Lewis County Noxious Weed Control Board, hereafter referred to as "the Board," and _____, hereafter referred to individually or collectively as "the property owner(s)."

INTRODUCTION

1. The control and eradication of noxious weeds on public and private lands is in the public interest and the presence of knotweed (*Polygonum* spp.) on private lands threatens wildlife habitat and provides a source for renewed infestation of public lands. Effective eradication of knotweed requires concerted efforts on both public and private lands to protect public resources.
2. The Board and its agents desire to perform activities to eradicate and/or control knotweed on public and private lands within Lewis County. These activities are authorized and carried out under one or more of the following chapters: 17.04 RCW, 17.06 RCW, 17.10 RCW, 17.24 RCW.
3. The property owner(s) is/are the sole owner of property located at _____ in Lewis County, Washington, hereafter referred to as "the property."
4. The property owner(s) is/are interested in and benefited by the eradication and/or control of knotweed on the property.
5. The property owner(s) and the Board desire to memorialize an agreement for the purpose of eradication and/or control of knotweed on the property.

AGREEMENT

1. **Permission.** In consideration of the benefits described above, the property owner(s) grant permission to the Board and its agents, contractors, cooperators and employees to enter onto the property, with at least twenty-four (24) hours notice, from April 1, 2010, to October 31, 2014, to perform activities to eradicate and/or control knotweed on the property. The property owner(s) acknowledge and agree that these activities may include the application of herbicide to the property.

The property owner(s) also grant permission to agents, contractors, cooperators and employees of the Washington State Department of Agriculture to enter onto the property, with at least twenty-four (24) hours notice, from April 1, 2010, through October 31, 2014, for the purpose of monitoring and evaluating the success of knotweed eradication and/or control activities.

2. **Expiration and Revocation.** The Board and its agents, contractors, cooperators and employees are permitted to enter the property on all of the above dates and until October 31, 2014, or until this permission is revoked, whichever occurs first. The property owner(s) may revoke this permission by presenting a written letter of revocation to the Board. The revocation is effective five (5) business days after receipt by the Board.
3. **Liability Waiver.** The purpose of entry onto the property is to perform activities to eradicate and/or control knotweed. The property owner(s) expressly agree to hold harmless the Board, the Washington Department of Agriculture (WSDA), and the agents, contractors, cooperators and employees of the Board, or WSDA, and to waive any claim of liability against the Board, WSDA, and the agents, contractors, cooperators and employees of the Board, or WSDA, for any injury, damage, or harm which is the logical and intended consequence of activities properly performed to eradicate and/or control knotweed.

The Board and its agents, contractors, cooperators and employees agree to waive any claim of liability against the landowner for any injury, damage, or harm which is not the consequence of the landowner's negligence. As to any other act or omission of either party under this agreement, each party shall be responsible for its own acts or omissions and those of its officers, employees and agents under this agreement. No party to this agreement shall be responsible to the other for the acts or omissions of entities or individuals not a party to this agreement.
4. **Entire Agreement.** This Permission to Enter Private Land and Waiver of Liability contains the entire agreement between the parties with regard to the matters set forth herein.
5. **Applicable Law.** This Permission to Enter Private Land and Waiver of Liability shall be construed and interpreted according to the laws of the State of Washington.

BY THE SIGNATURE BELOW, THE PROPERTY OWNER(S) DECLARE THAT THE TERMS OF THIS PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY HAVE BEEN COMPLETELY READ AND FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED AND EXPRESSLY WAIVE ANY CLAIM THAT THIS PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY IS NOT FAIRLY AND KNOWINGLY MADE.

Property Owner(s) Phone Number: _____

Property Owner(s) Address: _____

Street

City


County

Zip

_____ Name of property owner	_____ Signature of property owner	_____ Date
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_____ Name of property owner	_____ Signature of property owner	_____ Date
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_____ Name of property owner	_____ Signature of property owner	_____ Date
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<u>Paul F. Figueroa</u> Name of authorized representative, Lewis County Noxious Weed Control Board	 _____ Signature of authorized representative, Lewis County Noxious Weed Control Board	<u>8/20/10</u> _____ Date
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Contact information for the Lewis County Noxious Weed Control Board: Bill Wamsley, (360) 740-1215
351 NW North Street
Chehalis, WA 98532

ATTACHMENT C
Permission to Enter Private Land and Waiver of Liability
Lewis County
and its agent Lewis County Noxious Weed Control Board
Project for Knotweed Control
July 1, 2010 to June 30, 2011

PERMISSION TO ENTER PRIVATE LAND AND WAIVER OF LIABILITY

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INTRODUCTION

1. The control and eradication of noxious weeds on public and private lands is in the public interest and the presence of knotweed (*Polygonum* spp.) on private lands threatens wildlife habitat and provides a source for renewed infestation of public lands. Effective eradication of knotweed requires concerted efforts on both public and private lands to protect public resources.
2. The Board and its agents desire to perform activities to eradicate and/or control knotweed on public and private lands within Lewis County. These activities are authorized and carried out under one or more of the following chapters: 17.04 RCW, 17.06 RCW, 17.10 RCW, 17.24 RCW.
3. The property owner(s) is/are the sole owner of property located at _____ in Lewis County, Washington, hereafter referred to as "the property."
4. The property owner(s) is/are interested in and benefited by the eradication and/or control of knotweed on the property.
5. The property owner(s) and the Board desire to memorialize an agreement for the purpose of eradication and/or control of knotweed on the property.

AGREEMENT

1. **Permission.** In consideration of the benefits described above, the property owner(s) grant permission to the Board and its agents, contractors, cooperators and employees to enter onto the property, with at least twenty-four (24) hours notice, from April 1, 2010, to October 31, 2014, to perform activities to eradicate and/or control knotweed on the property. The property owner(s) acknowledge and agree that these activities may include the application of herbicide to the property.

The property owner(s) also grant permission to agents, contractors, cooperators and employees of the Washington State Department of Agriculture to enter onto the property, with at least twenty-four (24) hours notice, from April 1, 2010, through October 31, 2014, for the purpose of monitoring and evaluating the success of knotweed eradication and/or control activities.

2. **Expiration and Revocation.** The Board and its agents, contractors, cooperators and employees are permitted to enter the property on all of the above dates and until October 31, 2014, or until this permission is revoked, whichever occurs first. The property owner(s) may revoke this permission by presenting a written letter of revocation to the Board. The revocation is effective five (5) business days after receipt by the Board.
3. **Liability Waiver.** The purpose of entry onto the property is to perform activities to eradicate and/or control knotweed. The property owner(s) expressly agree to hold harmless the Board, the Washington Department of Agriculture (WSDA), and the agents, contractors, cooperators and employees of the Board, or WSDA, and to waive any claim of liability against the Board, WSDA, and the agents, contractors, cooperators and employees of the Board, or WSDA, for any injury, damage, or harm which is the logical and intended consequence of activities properly performed to eradicate and/or control knotweed.

The Board and its agents, contractors, cooperators and employees agree to waive any claim of liability against the landowner for any injury, damage, or harm which is not the consequence of the landowner's negligence. As to any other act or omission of either party under this agreement, each party shall be responsible for its own acts or omissions and those of its officers, employees and agents under this agreement. No party to this agreement shall be responsible to the other for the acts or omissions of entities or individuals not a party to this agreement.
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